

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 1038

(SENATE AUTHORS: KUNESH)

DATE
02/15/2021

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OFFICIAL STATUS
Introduction and first reading
Referred to Health and Human Services Finance and Policy

1.1 A bill for an act

1.2 relating to children; creating the Office of the Ombudsperson for American Indian

1.3 Families; modifying provisions related to the American Indian community-specific

1.4 board; transferring money; appropriating money; amending Minnesota Statutes

1.5 2020, sections 257.0755, subdivision 1; 257.076, subdivisions 3, 5; 257.0768,

1.6 subdivisions 1, 6; 257.0769; proposing coding for new law in Minnesota Statutes,

1.7 chapter 3.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. **3.9215** **OMBUDSPERSON FOR AMERICAN INDIAN FAMILIES.**

1.10 Subdivision 1. **Scope.** In recognition of the sovereign status of Indian tribes and the

1.11 unique laws and standards involved in protecting Indian children, this section creates the

1.12 Office of the Ombudsperson for American Indian Families and gives the ombudsperson the

1.13 powers and duties necessary to effectively carry out the functions of the office.

1.14 Subd. 2. **Creation.** The ombudsperson shall operate independently from but in

1.15 collaboration with the Indian Affairs Council.

1.16 Subd. 3. **Selection; qualifications.** The ombudsperson shall be selected by the American

1.17 Indian community-specific board established in section 3.9216. The ombudsperson serves

1.18 in the unclassified service at the pleasure of the community-specific board and may be

1.19 removed only for just cause. Each ombudsperson must be selected without regard to political

1.20 affiliation and shall be a person highly competent and qualified to analyze questions of law,

1.21 administration, and public policy regarding the protection and placement of children. In

1.22 addition, the ombudsperson must be experienced in dealing with the American Indian

1.23 community and knowledgeable about the needs of that community. No individual may serve

1.24 as ombudsperson while holding any other public office.

2.1 Subd. 4. **Appropriation.** Money appropriated for the Ombudsperson for American
2.2 Indian Families from the general fund or the special fund authorized by section 256.01,
2.3 subdivision 2, paragraph (o), is under the control of the ombudsperson. The amount necessary
2.4 for the ombudsperson to carry out the duties in this section is annually appropriated from
2.5 the general fund to the ombudsperson. This appropriation is available until expended and
2.6 is in addition to the appropriation under section 257.0769, subdivision 1, paragraph (a).

2.7 Subd. 5. **Definitions.** (a) For the purposes of this section, the following terms have the
2.8 meanings given them.

2.9 (b) "Agency" means the divisions, officials, or employees of the Departments of Human
2.10 Services and Health and local district courts or a designated county social service agency
2.11 as defined in section 256G.02, subdivision 7, engaged in providing child protection and
2.12 placement services for children. Agency also means any individual, service, organization,
2.13 or program providing child protection, placement, or adoption services in coordination with
2.14 or under contract to any other entity specified in this subdivision, including guardians ad
2.15 litem.

2.16 (c) "American Indian" refers to individuals who are members of federally recognized
2.17 tribes, eligible for membership in a federally recognized tribe, or are children or grandchildren
2.18 of a member of a federally recognized tribe. American Indian is a political status established
2.19 through treaty rights between the federal government and tribes. Each tribe has a unique
2.20 culture and practices specific to the tribe.

2.21 (d) "Facility" means any entity required to be licensed under chapter 245A.

2.22 (e) "Indian custodian" has the meaning given in United States Code, title 25, section
2.23 1903.

2.24 Subd. 6. **Organization.** (a) The ombudsperson may select, appoint, and compensate out
2.25 of available funds the assistants and employees deemed necessary to discharge
2.26 responsibilities. All employees, except the secretarial and clerical staff, serve at the pleasure
2.27 of the ombudsperson in the unclassified service. The ombudsperson and full-time staff are
2.28 members of the Minnesota State Retirement Association.

2.29 (b) The ombudsperson may delegate to staff members or members of the American
2.30 Indian Community-Specific Board under section 3.9216 any of the ombudsperson's authority
2.31 or duties except the duty of formally making recommendations to an administrative agency
2.32 or reports to the Office of the Governor or to the legislature.

2.33 Subd. 7. **Duties and powers.** (a) The ombudsperson has the duties listed in this paragraph.

3.1 (1) The ombudsperson shall monitor agency compliance with all laws governing child
3.2 protection and placement, public education, and housing issues related to child protection,
3.3 as they impact American Indian children and their families. In particular, the ombudsperson
3.4 shall monitor agency compliance with sections 260.751 to 260.835; 260C.193, subdivision
3.5 3; and 260C.215.

3.6 (2) The ombudsperson shall work with local state courts to ensure that:

3.7 (i) court officials, public policy makers, and service providers are trained in cultural
3.8 competency. The ombudsperson shall document and monitor court activities in order to
3.9 heighten awareness of diverse belief systems and family relationships;

3.10 (ii) qualified expert witnesses from the appropriate American Indian community,
3.11 including tribal advocates, are used as court advocates and are consulted in placement
3.12 decisions that involve American Indian children; and

3.13 (iii) guardians ad litem and other individuals from American Indian communities are
3.14 recruited, trained, and used in court proceedings to advocate on behalf of American Indian
3.15 children.

3.16 (3) The ombudsperson shall primarily work on behalf of American Indian children and
3.17 families, but shall also work on behalf of all Minnesota children and families as the
3.18 ombudsperson deems necessary and appropriate.

3.19 (b) The ombudsperson has the authority to investigate decisions, acts, and other matters
3.20 of an agency, program, or facility providing protection or placement services to American
3.21 Indian children. In carrying out this authority and the duties in paragraph (a), the
3.22 ombudsperson has the power to:

3.23 (1) prescribe the methods by which complaints are made, reviewed, and acted upon;

3.24 (2) determine the scope and manner of investigations to be made;

3.25 (3) investigate, upon a complaint or upon personal initiative, any action of any agency;

3.26 (4) request and be given access to any information in the possession of any agency
3.27 deemed necessary for the discharge of responsibilities. The ombudsperson is authorized to
3.28 set reasonable deadlines within which an agency must respond to requests for information.
3.29 Data obtained from any agency under this clause retains the classification the data had under
3.30 section 13.02 and the ombudsperson shall maintain and disseminate the data according to
3.31 chapter 13;

3.32 (5) examine the records and documents of an agency;

4.1 (6) enter and inspect, during normal business hours, premises within the control of an
4.2 agency; and

4.3 (7) subpoena any agency personnel to appear, testify, or produce documentary or other
4.4 evidence which the ombudsperson deems relevant to a particular matter under inquiry, and
4.5 petition the appropriate state court to seek enforcement with the subpoena. Any witness at
4.6 a hearing or before an investigation has the same privileges reserved to such a witness in
4.7 the courts or under the laws of this state. The ombudsperson may compel nonagency
4.8 individuals to testify or produce evidence according to procedures developed by the advisory
4.9 board.

4.10 (c) The ombudsperson may apply for grants and accept gifts, donations, and
4.11 appropriations for training relating to the duties of the ombudsperson. Grants, gifts, donations,
4.12 and appropriations received are appropriated to the ombudsperson to be used for training.
4.13 The ombudsperson may seek and apply for grants to develop new programs and initiatives
4.14 and to continue existing programs and initiatives. These funds may not be used for operating
4.15 expenses for the Office of the Ombudsperson for American Indian Families.

4.16 Subd. 8. **Matters appropriate for review.** (a) In selecting matters for review, an
4.17 ombudsperson should give particular attention to actions of an agency, facility, or program
4.18 that:

4.19 (1) may be contrary to law or rule;

4.20 (2) may be unreasonable, unfair, oppressive, or inconsistent with a policy or order of an
4.21 agency, facility, or program;

4.22 (3) may result in abuse or neglect of a child;

4.23 (4) may disregard the rights of a child or another individual served by an agency or
4.24 facility; or

4.25 (5) may be unclear or inadequately explained, when reasons should have been revealed.

4.26 (b) The ombudsperson shall, in selecting matters for review, inform other interested
4.27 agencies in order to avoid duplicating other investigations or regulatory efforts, including
4.28 activities undertaken by a tribal organization under the authority of sections 260.751 to
4.29 260.835.

4.30 Subd. 9. **Complaints.** The ombudsperson may receive a complaint from any source
4.31 concerning an action of an agency, facility, or program. After completing a review, the
4.32 ombudsperson shall inform the complainant, agency, facility, or program. Services to a
4.33 child shall not be unfavorably altered as a result of an investigation or complaint. An agency,

5.1 facility, or program shall not retaliate or take adverse action, as defined in section 626.556,
5.2 subdivision 4a, paragraph (c), against an individual who, in good faith, makes a complaint
5.3 or assists in an investigation.

5.4 Subd. 10. **Recommendations to agency.** (a) If, after reviewing a complaint or conducting
5.5 an investigation and considering the response of an agency, facility, or program and any
5.6 other pertinent material, the ombudsperson determines that the complaint has merit or that
5.7 the investigation reveals a problem, the ombudsperson may recommend that the agency,
5.8 facility, or program:

5.9 (1) consider the matter further;

5.10 (2) modify or cancel its actions;

5.11 (3) alter a rule, order, or internal policy;

5.12 (4) explain more fully the action in question; or

5.13 (5) take other action as authorized under section 257.0762.

5.14 (b) At the ombudsperson's request, the agency, facility, or program shall, within a
5.15 reasonable time, inform the ombudsperson about the action taken on the recommendation
5.16 or the reasons for not complying with the recommendation.

5.17 Subd. 11. **Recommendations and public reports.** (a) The ombudsperson may send
5.18 conclusions and suggestions concerning any matter reviewed to the governor and shall
5.19 provide copies of all reports to the advisory board and to the groups specified in section
5.20 257.0768, subdivision 1. Before making public a conclusion or recommendation that
5.21 expressly or implicitly criticizes an agency, facility, program, or any person, the
5.22 ombudsperson shall inform the governor and the affected agency, facility, program, or
5.23 person concerning the conclusion or recommendation. When sending a conclusion or
5.24 recommendation to the governor that is adverse to an agency, facility, program, or any
5.25 person, the ombudsperson shall include any statement of reasonable length made by that
5.26 agency, facility, program, or person in defense or mitigation of the ombudsperson's
5.27 conclusion or recommendation.

5.28 (b) In addition to whatever conclusions or recommendations the ombudsperson may
5.29 make to the governor on an ad hoc basis, the ombudsperson shall, at the end of each year,
5.30 report to the governor concerning the exercise of the ombudsperson's functions during the
5.31 preceding year.

6.1 Subd. 12. **Civil actions.** The ombudsperson and designees are not civilly liable for any
6.2 action taken under this section if the action was taken in good faith, was within the scope
6.3 of the ombudsperson's authority, and did not constitute willful or reckless misconduct.

6.4 Subd. 13. **Use of funds.** Any funds received by the ombudsperson from any source may
6.5 be used to compensate members of the American Indian community-specific board for
6.6 reasonable and necessary expenses incurred in aiding and assisting the ombudsperson in
6.7 programs and initiatives.

6.8 **Sec. 2. [3.9216] AMERICAN INDIAN COMMUNITY-SPECIFIC BOARD.**

6.9 Subdivision 1. **Membership.** The board consists of five members who are members of
6.10 a federally recognized tribe or members of the American Indian community. The chair of
6.11 the Indian Affairs Council shall appoint the members of the board. In making appointments,
6.12 the chair must consult with other members of the council.

6.13 Subd. 2. **Compensation.** Members do not receive compensation but are entitled to
6.14 receive reimbursement for reasonable and necessary expenses incurred doing board-related
6.15 work, including travel for meetings, trainings, and presentations. Board members may also
6.16 receive per diem payments in a manner and amount prescribed by the board.

6.17 Subd. 3. **Meetings.** The board shall meet regularly at the request of the appointing chair,
6.18 board chair, or ombudsperson. The board must meet at least quarterly. The appointing chair,
6.19 board chair, or ombudsperson may also call special or emergency meetings as necessary.

6.20 Subd. 4. **Removal and vacancy.** (a) A member may be removed by the appointing
6.21 authority at any time, either for cause, as described in paragraph (b), or after missing three
6.22 consecutive meetings, as described in paragraph (c).

6.23 (b) If removal is for cause, the member must be given notice and an opportunity for a
6.24 hearing before removal.

6.25 (c) After a member misses two consecutive meetings, and before the next meeting, the
6.26 board chair shall notify the member in writing that the member may be removed if the
6.27 member misses the next meeting. If a member misses three consecutive meetings, the board
6.28 chair must notify the appointing authority.

6.29 (d) If there is a vacancy on the board, the appointing authority shall appoint a person to
6.30 fill the vacancy for the remainder of the unexpired term.

7.1 Subd. 5. Duties. (a) The board shall appoint the Ombudsperson for American Indian
7.2 Families and shall advise and assist the ombudsperson in various ways, including, but not
7.3 limited to:

7.4 (1) selecting matters for attention;

7.5 (2) developing policies, plans, and programs to carry out the ombudsperson's functions
7.6 and powers;

7.7 (3) attending policy meetings when requested by the ombudsperson;

7.8 (4) establishing protocols for working with American Indian communities;

7.9 (5) developing procedures for the ombudsperson's use of the subpoena power to compel
7.10 testimony and evidence from nonagency individuals; and

7.11 (6) making reports and recommendations for changes designed to improve standards of
7.12 competence, efficiency, justice, and protection of rights.

7.13 (b) The board shall not make individual case recommendations.

7.14 Subd. 6. Grants, gifts, donations, and appropriations. The board may apply for grants
7.15 for the purpose of training and educating the American Indian community on child protection
7.16 issues involving American Indian families. The board may also accept gifts, donations, and
7.17 appropriations for training and education. Grants, gifts, donations, and appropriations
7.18 received are appropriated to the board for training and education purposes. The board may
7.19 seek and apply for grants to develop new programs and initiatives and to continue existing
7.20 programs and initiatives. These funds may also be used to reimburse board members for
7.21 reasonable and necessary expenses incurred in aiding and assisting the Office of the
7.22 Ombudsperson for American Indian Families in Office of the Ombudsperson for American
7.23 Indian Families programs and initiatives, but may not be used for operating expenses for
7.24 the Office of Ombudsperson for American Indian Families.

7.25 Subd. 7. Terms and expiration. The terms and expiration of board membership are
7.26 governed by section 15.0575.

7.27 Sec. 3. Minnesota Statutes 2020, section 257.0755, subdivision 1, is amended to read:

7.28 Subdivision 1. **Creation.** Each ombudsperson shall operate independently from but in
7.29 collaboration with the community-specific board that appointed the ombudsperson under
7.30 section 257.0768: ~~the Indian Affairs Council~~, the Minnesota Council on Latino Affairs, the
7.31 Council for Minnesotans of African Heritage, and the Council on Asian-Pacific Minnesotans.

8.1 Sec. 4. Minnesota Statutes 2020, section 257.076, subdivision 3, is amended to read:

8.2 Subd. 3. **Communities of color.** "Communities of color" means the following: ~~American~~
8.3 ~~Indian~~, Hispanic-Latino, Asian-Pacific, African, and African-American communities.

8.4 Sec. 5. Minnesota Statutes 2020, section 257.076, subdivision 5, is amended to read:

8.5 Subd. 5. **Family of color.** "Family of color" means any family with a child under the
8.6 age of 18 who is identified by one or both parents or another trusted adult to be of ~~American~~
8.7 ~~Indian~~, Hispanic-Latino, Asian-Pacific, African, or African-American descent.

8.8 Sec. 6. Minnesota Statutes 2020, section 257.0768, subdivision 1, is amended to read:

8.9 Subdivision 1. **Membership.** ~~Four~~ Three community-specific boards are created. Each
8.10 board consists of five members. The chair of each of the following groups shall appoint the
8.11 board for the community represented by the group: ~~the Indian Affairs Council~~; the Minnesota
8.12 Council on Latino Affairs; the Council for Minnesotans of African Heritage; and the Council
8.13 on Asian-Pacific Minnesotans. In making appointments, the chair must consult with other
8.14 members of the council.

8.15 Sec. 7. Minnesota Statutes 2020, section 257.0768, subdivision 6, is amended to read:

8.16 Subd. 6. **Joint meetings.** The members of the ~~four~~ three community-specific boards
8.17 shall meet jointly at least four times each year to advise the ombudspersons on overall
8.18 policies, plans, protocols, and programs for the office.

8.19 Sec. 8. Minnesota Statutes 2020, section 257.0769, is amended to read:

8.20 **257.0769 FUNDING FOR THE OMBUDSPERSON PROGRAM.**

8.21 Subdivision 1. **Appropriations.** (a) 25 percent of the money is appropriated from in the
8.22 special fund authorized by section 256.01, subdivision 2, paragraph (o), is annually
8.23 appropriated to the ~~Indian Affairs Council~~ Office of Ombudsperson for American Indian
8.24 Families for the purposes of sections 257.0755 to 257.0768 section 3.9215.

8.25 (b) 75 percent of the money is appropriated from in the special fund authorized by section
8.26 256.01, subdivision 2, paragraph (o), is annually appropriated to the ~~Minnesota Council on~~
8.27 Latino Affairs Office of Ombudsperson for Families for the purposes of sections 257.0755
8.28 to 257.0768.

9.1 ~~(e) Money is appropriated from the special fund authorized by section 256.01, subdivision~~
9.2 ~~2, paragraph (o), to the Council for Minnesotans of African Heritage for the purposes of~~
9.3 ~~sections 257.0755 to 257.0768.~~

9.4 ~~(d) Money is appropriated from the special fund authorized by section 256.01, subdivision~~
9.5 ~~2, paragraph (o), to the Council on Asian-Pacific Minnesotans for the purposes of sections~~
9.6 ~~257.0755 to 257.0768.~~

9.7 Subd. 2. **Title IV-E reimbursement.** The commissioner shall obtain federal title IV-E
9.8 financial participation for eligible activity by the ombudsperson for families under section
9.9 257.0755 and the ombudsperson for American Indian families under section 3.9215. The
9.10 ombudsperson for families and the ombudsperson for American Indian families shall maintain
9.11 and transmit to the Department of Human Services documentation that is necessary in order
9.12 to obtain federal funds.

9.13 Sec. 9. **TRANSFER OF MONEY.**

9.14 Before the end of fiscal year 2021, the Office of the Ombudsperson for Families must
9.15 transfer to the Office of the Ombudsperson for American Indian Families any remaining
9.16 money designated for use by the Ombudsperson for American Indian Families. This section
9.17 is cost-neutral.